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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/313,048	05/17/1999	DENNIS A. CARSON	103.009US1	3398
21186	7590	04/29/2004	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.			BERCH, MARK L	
P.O. BOX 2938			ART UNIT	
MINNEAPOLIS, MN 55402			PAPER NUMBER	

1624

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/313,048	<b>Applicant(s)</b> CARSON ET AL.	
	<b>Examiner</b> Mark L. Berch	<b>Art Unit</b> 1624	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-5,8-10 and 21.

Claim(s) objected to: 6,7 and 20.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 10 Oct 2000.
10. ☒ Other: PTO-413

Mark L. Berch  
Primary Examiner  
Art Unit: 1624

#### DETAILED ACTION

The amendment filed 4/19/04 under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered because: The proposed amendment raises new issues that would require further consideration and/or search.

The amendment to claim 1 would have resolved the ambiguity about what moiety was intended. However, applicants have not shown that one of ordinary skill in the art could have figured out that this is what was intended. Moreover, it seems very unlikely to the examiner that this was intended. This is a choice for R3. Thus, using this choice A would be C(O)OR<sub>3</sub>, and for this option -C(O)O-O(O)C-Q, where Q is the rest of the amino acid. Such a compound is called a diacyl peroxide. Such compounds are so reactive (free radical initiators) that they cannot be used internally; their only medical use so far as the examiner is aware is topically as a bleaching agent on skin for e.g. acne.

The arguments on the propyl issue are accepted; that amendment, if presented alone, would have been enterable.

#### *Information Disclosure Statement*

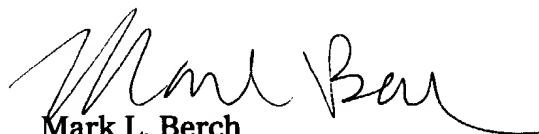
As best the examiner can determine, the enclosed PTO-1449 is what applicants refer to. If this is not correct, applicants must supply a new PTO-1449. The two non-patent documents have been cited only as their abstract, since it is the abstracts which were provided to the PTO, not the underlying article.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark L. Berch whose telephone number is 571-272-0663. The examiner can normally be reached on M-F 7:15 - 3:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mukund Shah can be reached on (571)272-0674. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Mark L. Berch  
Primary Examiner  
Art Unit 1624

4/22/04